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NORFOLK SOUTHERN CORPORATION
THREE COMMERCIAL PLACE
NORFOLK, VA 23510

FILED
DEC 29 2004

TRANSPORTATION BOARD

James R. Paschall
General Attorney

Direct Dial Number
(757) 629-2759
fax (757) 533-4872

ENTERED
Office of Proceedings

DEC 29 2004

Part of
Public Record

December 27, 2004

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Docket No. AB-290 (Sub-No. 242X), Norfolk Southern Railway
Company - Discontinuance of Service - between Newark, New Jersey and
Kearny, New Jersey, in Essex and Hudson Counties, New Jersey - Notice
of Exemption

Dear Mr. Williams:

Enclosed for filing with the Board is an original and ten copies of Norfolk
Southern Railway Company's ("NSR") Notice of Exemption in the subject proceeding.
Also, enclosed is a check in the amount of \$3000 for the filing fee.

NSR's intention is to file this Notice of Exemption on December 29, 2004. If the
Board receives this filing before December 29, NSR requests that the filing date be
postponed to December 29, 2004.

Please acknowledge receipt of this filing on the enclosed copy of this letter and
return it to me in the self-addressed, stamped envelope.

Yours very truly,

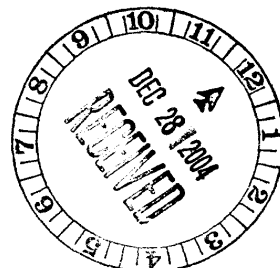
James R. Paschall

James R. Paschall

Enclosures

9

1



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BEFORE THE

SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-290 (SUB-NO. 242X)

NORFOLK SOUTHERN RAILWAY COMPANY

-- DISCONTINUANCE OF SERVICE EXEMPTION --

BETWEEN NEWARK, NEW JERSEY AND KEARNY, NEW JERSEY,
IN ESSEX AND HUDSON COUNTIES, NEW JERSEY

VERIFIED NOTICE OF EXEMPTION

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James R. Paschall
General Attorney
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

(757) 629-2759

Attorney for
Norfolk Southern Railway Company

Dated: December 27, 2004

Before the
Surface Transportation Board

Docket No. AB-290 (Sub-No. 242X)

Norfolk Southern Railway Company

-- Discontinuance of Service Exemption --

Between Newark, New Jersey and Kearny, New Jersey,
in Essex and Hudson Counties, New Jersey

Verified Notice of Exemption

COMES NOW Norfolk Southern Railway Company ("NSR"), and files this notice of exemption from regulation under 49 U.S.C. §10903, pursuant to the provisions of 49 U.S.C. §10502 and the class exemption of the Board's regulations at 49 CFR §1152.50, for NSR's discontinuance of service over its 10.0-mile line of railroad lying between Milepost WD-2.2 in Newark, New Jersey and Milepost WD-8.4 in Kearny, New Jersey (which is a segment of a branch Line called the "Boonton" Line), and between Milepost NK-4.3 and Milepost NK-8.1 on the adjacent Newark Industrial Track, in Essex and Hudson Counties, New Jersey (the "Line"). Despite the two line designations, the Line had last been operated as a single contiguous track over which a local freight train served the last remaining shipper on the Line, which was located on the Newark Industrial Track. Part of the Newark Industrial Track is in Harrison, New Jersey.

Pursuant to the Board's regulations at 49 CFR §1152.50, NSR states as follows:

Traffic Certification - §§1152.50(b) and (d)(2)

The attached certificate of NSR General Manager D. A. Brown, II confirms that no traffic has originated, terminated or moved overhead on the Line for at least two years, (or any overhead traffic on the Line can be rerouted over other lines), and no complaint concerning cessation of service over this Line is pending with the Board or a U. S. District Court or has been decided in favor of a complainant within the two-year period.¹

Effective Date - §1152.50(d)(2)

The effective date of the exemption for NSR's formal discontinuance of service over its 10.0-mile contiguous line of railroad lying between Milepost WD-2.2 in Newark, New Jersey and Milepost WD-8.4 in Kearny, New Jersey (on the Boonton Line), and

¹New Jersey Transit formerly operated commuter rail passenger service over the Boonton Line segment of the subject Line, but discontinued that service, and its lease of that segment of the Boonton Line, over two years ago. The Associated Press circulated an article by Steve Strunsky on April 19, 2004 that appeared in several New Jersey newspapers, including *The Burlington County Times*. That article stated that New Jersey Transit had decided not to reactivate commuter rail service on a branch of the Montclair Line [which includes the Boonton Line segment of the subject Line] after canceling the service in September 2002, when a rail link was completed to allow Midtown Direct service into Manhattan. NJ Transit Executive Director George Warrington said reopening the lower Boonton line, which served 800 riders a day, would be too expensive, requiring \$26 million in immediate track, signal, bridge and other repair work, plus another \$46 million in capital spending over 10 years. And, Warrington said, the line would cost \$3 million a year to operate, while taking in just \$108,000 in fares. New Jersey Transit was responsible for maintenance of the Boonton Line segment of subject Line until it cancelled its lease of the 11-mile lower Boonton Line and re-routed passenger service over its new, nearby Montclair Connection route. Despite support for the reopening expressed at a hearing on the matter, Warrington

between Milepost NK-4.3 and Milepost NK-8.1 on the adjacent and contiguous Newark Industrial Track, will be February 17, 2005.

General Corporate Information - §1152.22(a)(1-2) and (7)

The party filing this notice is Norfolk Southern Railway Company, a Virginia corporation and a common carrier by railroad subject to STB jurisdiction under 49 U.S.C. Subtitle IV, Chapter 105, whose representative to whom correspondence may be sent is:

James R. Paschall
General Attorney
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, Virginia 23510
(757) 629-2759

Description of the Line, the Relief Sought, Map, Zip Code - §1152.22(a)(3-4 and 7)

The Line that is the subject of this notice of exemption is 10.0 miles in length and is located between Milepost WD-2.2 in Newark, New Jersey and Milepost WD-8.4 in Kearny, New Jersey, and between Milepost NK-4.3 and Milepost NK-8.1 on the adjacent Newark Industrial Track, part of which is in Harrison, New Jersey. The relief sought is an exemption from the prior approval requirements of 49 U.S.C. §10903 for NSR's discontinuance of service over the Line under the class exemption for abandonment of or formal discontinuance of service over out-of-service rail lines in the Board's regulations at 49 CFR §1152.50. A map showing the Line over which service is to be formally discontinued, other rail lines in the area, highways, and population

issued his decision with a statement that, "the economics just don't work."

centers is attached as Exhibit 1 to this notice. The Line traverses some or all of United States Postal Service ZIP Codes 07029, 07032, 07094, 07099, 07102-07108, 07112 and 07114.

Suitability of the Line for Other Public Purposes - §1152.22(e)(4)

Because this is a discontinuance of service notice of exemption proceeding and does not involve a rail line abandonment, there is no need to provide an opportunity for trail use/rail banking or public use condition requests. Thus, further information under this item and title information with respect to the Line are not relevant to the exemption that is the subject of this notice or to formal discontinuance of service over the Line.²

Statement Concerning Federally-Granted Right-of-Way - §1152.50(d)(1)

Based on information in the possession of NSR, the Line does not contain federally-granted rights-of-way. Any documentation in NSR's possession will be made available promptly to those requesting it. Inasmuch as this notice involves only a discontinuance of service, however, NSR states that any information pertaining to right-of-way grants, even if it did exist, would not be relevant or need to be produced in this proceeding.

² Recent Board notices of exemption stating this principle are STB Docket No. AB-55 (Sub-No. 654X), *CSX Transportation, Inc. - Discontinuance of Service Exemption - In Washington, DC*, served September 20, 2004; STB Docket No. AB-33 (Sub-No. 212X), *Union Pacific Railroad Company - Discontinuance of Service and Trackage Rights Exemption - In Los Angeles and Orange Counties, CA*, served March 31, 2004.

Labor Protection - §1152.50(d)(2)

Since the Line over which service is to be formally discontinued has been out of service for over two years, NSR believes no employees will be adversely affected by the formal discontinuance of service over this Line. However, as a condition to exercise of the authority permitted by the exemption in this matter, NSR will accept the imposition of standard labor protective conditions as set forth in *Oregon Short Line R. Co. - Abandonment - Goshen*, 360 I.C.C. 91 (1979).

Environmental and Historic Reports; Certifications - §1105.6, §1105.7, §1105.8, §1105.11

Because this proceeding involves only a notice of exemption for the discontinuance of service and not a rail line abandonment, no environmental or historic documentation is required under 49 CFR §1105.6(c)(2), §1105.7 and 49 CFR §1105.8 and no transmittal letter is required under 49 CFR §1105.11 . Further STB approval is required for NSR to abandon the Line.³

Service and Newspaper Notice Requirements Certification - §1152.50(d)(1-2)

As the attached certification confirms, NSR certifies compliance with the service and notice requirements of 49 C.F.R. §1152.50(d)(1)(certain government agencies) and 49 C.F.R. §1105.12 (newspaper notice) with respect to this notice of exemption.

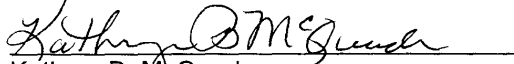
³The decisions cited in footnote one also are recent examples of the application of these principles.

Offers of Financial Assistance

Because this is a discontinuance of service proceeding and does not involve a rail line abandonment, and because there has been no service over the Line for at least two years, the Board need not consider offers of financial assistance (OFAs) to acquire the line for continued rail service.⁴

For the foregoing reasons, NSR states that the proposed formal discontinuance of service over the Line is exempt from the prior approval requirements of 49 U.S.C. §10903 pursuant to 49 U.S.C. §10502 and the Board's class exemption at 49 C.F.R. §1152.50 and requests that the Board serve the appropriate notice of exemption.

Respectfully submitted,
NORFOLK SOUTHERN RAILWAY COMPANY


Kathryn B. McQuade
Executive Vice President Planning
and Chief Information Officer

Of Counsel:

James R. Paschall
General Attorney
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, Virginia 23510-2191
(757) 629-2759

Dated: December 27, 2004

⁴ See STB Docket No. AB-55 (Sub-No. 641X), *CSX Transportation Inc. - Discontinuance Exemption in Knox County, TN*, served January 2, 2004.

CERTIFICATION

STATE OF Pennsylvania:

SS:

CITY OF Harrisburg:

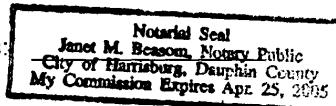
D. A. Brown, II, makes oath and says that he is General Manager Northern Region for Norfolk Southern Railway Company; that the line of railroad between Milepost WD-2.2 in Newark, New Jersey and Milepost WD-8.4 in Kearny, New Jersey, and between Milepost NK-4.3 and Milepost NK-8.1 on the adjacent Newark Industrial Track, in Essex and Hudson Counties, New Jersey, over which NSR's freight rail service is to be discontinued, are subject to his supervision and direction; that the last local trains to operate over the line did so in continuous movements over both segments to serve a single customer; that no local traffic has moved over the line for at least two years, that no overhead traffic has moved over the line for at least two years and that overhead traffic, if there were any, could be rerouted over other lines; and that no formal complaint filed by a user of NSR's freight rail service on the line or a state or local government entity acting on behalf of such user regarding cessation of service over the line either is pending before the Surface Transportation Board or any U. S. District Court or has been decided in favor of the complainant within the two-year period.

D. A. Brown, II
D. A. Brown, II

Subscribed and sworn to before me
this 7th day of December, 2004.

Janet M. Beason
Notary Public

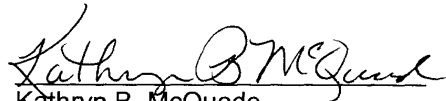
My commission expires:



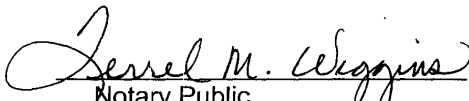
VERIFICATION

COMMONWEALTH OF VIRGINIA :
SS:
CITY OF NORFOLK :

Kathryn B. McQuade, being duly sworn, deposes and says that she is Executive Vice President Planning and Chief Information Officer of Norfolk Southern Railway Company; that she is authorized to sign, verify, and file with the Surface Transportation Board the foregoing Notice of Exemption in Docket No. AB-290, (Sub-No. 242X) on behalf of Norfolk Southern Railway Company; that she has carefully examined all of the statements contained in said Notice of Exemption; that she has knowledge of the matters set forth therein; and that all such statements made and matters set forth are true and correct to the best of her knowledge, information, and belief.


Kathryn B. McQuade

Subscribed and sworn to before me
this 27th day of December, 2004.



Notary Public

My commission expires:

1-31-07
[SEAL]

CERTIFICATION

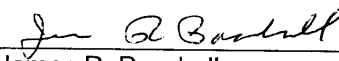
I hereby certify that (1) pursuant to 49 C.F.R. §1105.12, a notice of intent to discontinue rail service was published in *The Star Ledger*, Newark, New Jersey, on December 13, 2004, (see Exhibit 2); and (2) that the notice required by 49 C.F.R. §152.50(d)(1) was given (see Exhibit 3).

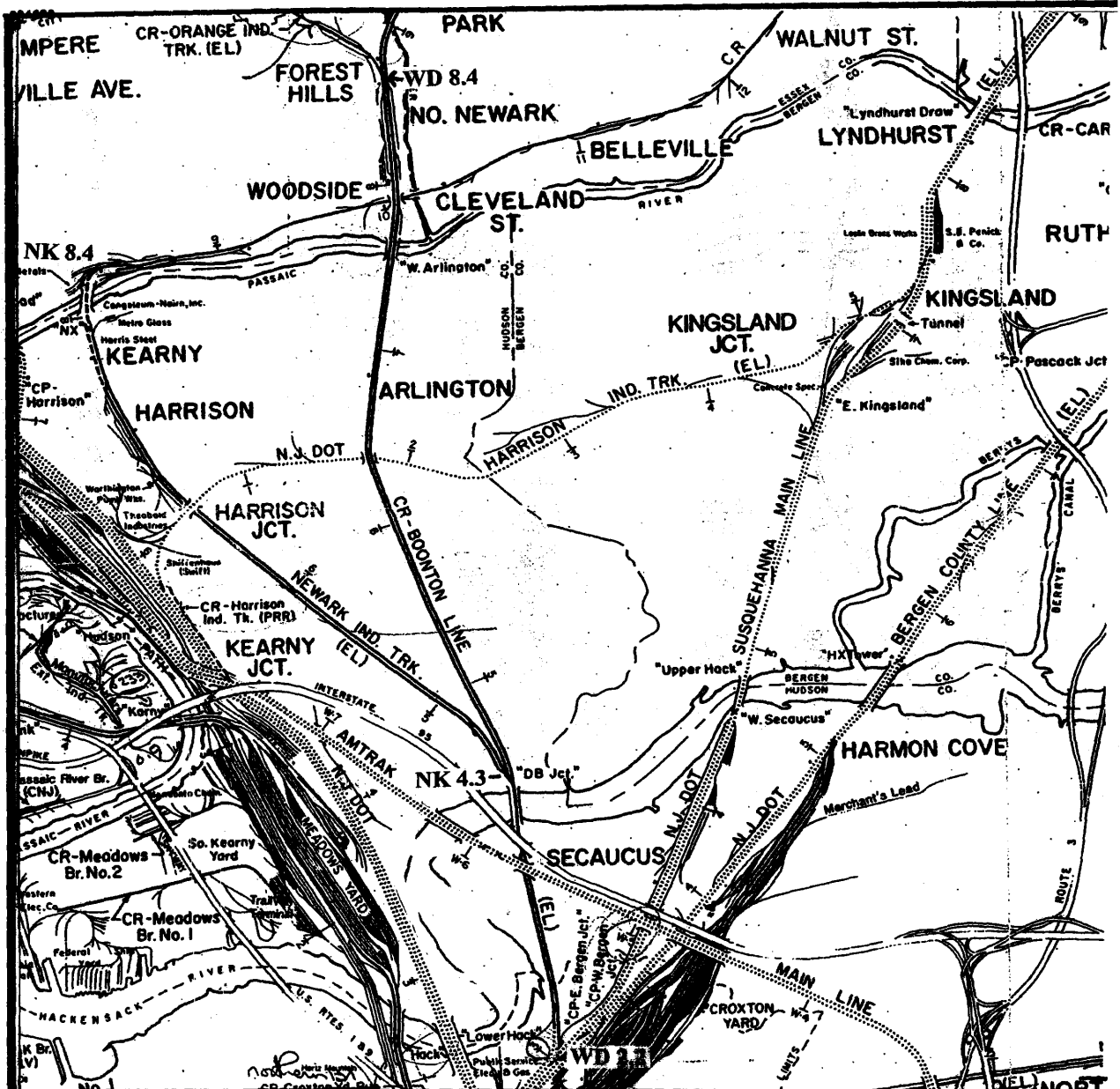

James R. Paschall

Dated: December 27, 2004

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Exemption was served upon Ms. Jeanne M. Fox, President, New Jersey Board of Public Utilities, Two Gateway Plaza, Newark, New Jersey 07102; the United States Department of Defense (MTMCTEA), Transportation Engineering Agency, Railroads for National Defense Program, 720 Thimble Shoals Blvd., Suite 130, Newport News, VA 23606-2574; Tom Ross, Chief of National Recreation and Trails, U. S. Department of the Interior - National Park Service, Recreation Resources Assistance Division, 1849 C Street, N.W., Washington, D.C., 20240; and U. S. Department of Agriculture, Chief of the Forest Service, 4th Floor N.W., Auditors' Building, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250; on December 27, 2004, by first class mail, postage prepaid.


James R. Paschall



NS NORFOLK SOUTHERN

OWNING COMPANY

OFFICE OF CHIEF ENGINEER - DESIGN & CONSTRUCTION ATLANTA, GA.

CP "West End" to Forest Hills "DB" Jet to Kearney

TITLE	
Proposed Service Discontinuance	
Boonton Line	Newark Industrial Track
WD 2.2 - WD 8.4	NK 4.3 - NK 8.4

NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE
 Norfolk Southern Railway Company gives notice that on or about December 29, 2004, it intends to file with the Surface Transportation Board (STB), Washington, DC 20423, a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments, permitting the discontinuance of service over a 10-mile line of railroad between Milepost WD-2.2 in Newark, New Jersey and Milepost WD-8.4 in Kearny, New Jersey, and between Milepost NK-4.3 and Milepost NK-8.1 on the adjacent Newark Industrial Track, in Essex and Hudson Counties, New Jersey, which traverses through United States Postal Service Zip Codes 07029, 07032, 07094, 07099, 07102-07108, 07112 and 07114, in Essex and Hudson Counties, New Jersey. The proceeding will be docketed as No. AB-290 (Sub-No. 242X).

Appropriate offers of financial assistance to continue rail service can be filed with the STB. An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance) must be filed directly with the STB's Office of the Secretary, 1925 K Street, N.W., Washington, DC 20423-0001 (See 49 CFR 1104.1(a) and 11.04.2(a)), and one copy must be served on applicant's representative (See 49 CFR 1104.12(a)). Questions regarding offers of financial assistance may be directed to the STB's Office of Public Assistance at 202-927-7597. Copies of any comments or requests for conditions should be served on the applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-9241, (757) 629-2759.

\$61.50

STATE OF NEW JERSEY }
 COUNTY OF ESSEX } SS

Being duly sworn, according to law, on h oath sayeth that
 he is Cent of the
 Star-Ledger, in said County of Essex, and that the notice, of
 which the attached is a copy, was published in said paper
 on the 13 day of Dec 2004
 and continued therein for _____
 successively, at least once in each _____
 for _____

Sworn to and subscribed

before me this 15

day of Dec, 2004

Donna M. Clement
 NOTARY PUBLIC of NEW JERSEY

DONNA M. CLEMENT
 NOTARY PUBLIC OF NEW JERSEY
 My Commission Expires Mar 5, 2008



Exhibit 3

Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-9241

James R. Paschall
General Attorney

Writer's Direct Dial Number
(757) 629-2759

December 15, 2004

Ms. Jeanne M. Fox, President
New Jersey Board of Public Utilities
Two Gateway Plaza
Newark, NJ 07102

United States Department of Defense
(MTMCTEA)
Transportation Engineering Agency
Railroads for National Defense Program
720 Thimble Shoals Boulevard, Suite 130
Newport News, VA 23606-2574

Mr. Tom Ross
Chief of National Recreation and Trails
U. S. Department of the Interior
National Park Service
Recreational Resources Assistance Division
1849 C Street, N.W.
Washington, DC 20240

U. S. Department of Agriculture
Chief of the Forest Service
4th Floor, N. W., Auditor's Building
14th Street and Independence Avenue, S.W.
Washington, DC 20250

Re: STB Docket No. AB-290 (Sub-No. 242X), Norfolk Southern Railway Company –
Discontinuance of Service - Essex and Hudson Counties, New Jersey

Ladies and Gentlemen:

Pursuant to 49 CFR 1152.50(d)(1), Norfolk Southern Railway Company (NSR) hereby gives notice that on or about December 29, 2004, it will file with the Surface Transportation Board a notice of exemption from regulation in accordance with the exemption regulations set forth at 49 CFR Part 1152, Subpart F. That notice of exemption will permit NSR's discontinuance of service of a 10-mile line of railroad lying between Milepost WD-2.2, in Newark, New Jersey and Milepost WD-8.4 in Kearny, New Jersey, and between Milepost NK-4.3 and Milepost NK-8.1 on the adjacent Newark Industrial Track, Essex and Hudson Counties, New Jersey (see attached map). No revenue traffic has originated or terminated or moved overhead on the lines over which service is to be discontinued for more than two years. Based on information in our possession, the lines do not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

Very truly yours,

James R. Paschall